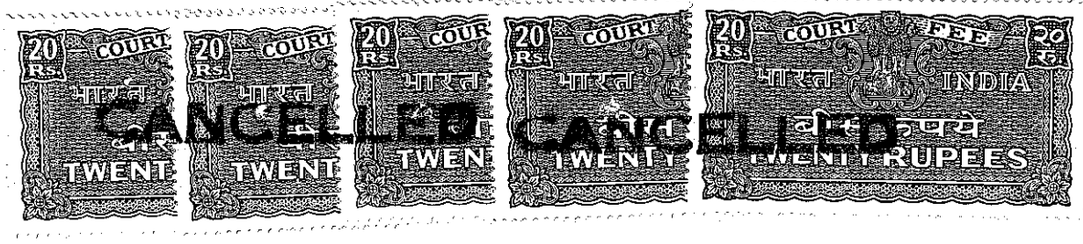

(3)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

W.P.NO. 2939 OF 2000

BETWEEN

Shiv Karan Singh Thakur, aged about 54 years, Son of Raghu Raj Singh Thakur, resident of Amin Para, Raipur, working as Peon/Choukidar at Krishi Upaj Mandi Samiti, Raipur (MP).

PETITIONER

A N D

1. The State of Madhya Pradesh, through the Director Krishi Vipnan Board, M.P. Bhopal.

2. Deputy Director, M.P.Rajya Krishi Vipnan Board, Raipur, Division Raipur (MP).

3. Secretary, Krishi Upaj Mandi Samiti, Raipur (MP).

RESPONDENTS

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA

41

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 2939 of 2000

Shiv Karan Singh Thakur

-Versus-

The State & others

POST FOR ORDER ON 7th.05.2004

Sd/-
L.C.BHADOO
Judge

6th.05.2004

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 2939 of 2000

Shiv Karan Singh Thakur

-Versus-

The State & others

Petitioner by Shri Awadh Tripathi, Advocate.

State by Shri U.N.S.Deo, Govt. Advocate.

Respondent No.3 by Shri Gautam Bhaduri, Advocate.

ORDER

(Passed on 7th May, 2004)

By Justice L.C.Bhadoo.

1. By this writ petition under Article 226/227 of the Constitution of India the petitioner is questioning the issuance of the show cause notice dated 22.4.2000 whereby the Respondent No.3 informed the petitioner that he will be completing the age of superannuation i.e. 60 years on 19.5.2000.

2. The petitioner's petition is that he was appointed on the post of peon vide order dated 31st January, 1966. At the time of the appointment the petitioner submitted his school leaving certificate in which his date of birth was shown as "1st July, 1946", copy of the school leaving certificate is Annexure P/2 but due to sheer negligence on the part of the Respondent No.3 the date of birth of the petitioner was recorded as "19.5.1940" in the service record, instead of "1.7.1946". When the petitioner came to know about this fact he immediately made a representation to the Respondent No.3 alongwith copy of the school leaving certificate and relevant documents and on the basis of that the respondent No.3 corrected the date of birth of the petitioner as "1.7.1946" and the correction

(43)

was also made in the service book of the petitioner. Thereafter vide letter dated 11.4.2000 (Annexure P/3) the Respondent No.3 informed the Managing Director that on perusal of the service book of the petitioner it has been found that the then Secretary of Mandi Samiti changed the date of birth of the petitioner from "19.5.1940" to "1.7.1946" and as per the said date the petitioner is to retire on 31st May 2000 he sought advice of the Managing Director. However without waiting the response of the respondent No.1 the Respondent No.3 issued notice Annexure P/4. The petitioner immediately filed a representation alongwith photocopy of the school leaving certificate but the Respondent No.3 has not considered the representation, a copy of the representation is filed as Annexure P/5. The respondent No.3 was not entitle to change the date of birth of the petitioner, which was corrected after considering the representation of the petitioner. Ultimately it has been prayed that the show cause notice Annexure P/4 be quashed and the Respondent No.1 be directed to treat the date of birth of the petitioner as "1.7.1946" instead of "19.5.1940".

3. Return has been filed by Respondent No.3 in which it has been mentioned that though the contention of the petitioner is that his date of birth is 1.7.1946 and the same is based on the relevant documents, but there is no documentary evidence available on record to show that the date of birth of the petitioner is 1.7.1946, the service book of the petitioner shows that the original entry was struck off and was changed as 1.7.1946 and no representation made by the petitioner is available on record requesting change of his date of birth. The entry regarding the date of birth i.e. 1.7.1946 is unauthorized. The provisions of Rule 84 and 85 of the Financial Code Part-I envisaged that the entry regarding date of birth in the

(44)

service book is final and cannot be changed in any circumstances except by the order of the competent authority. The change in the date of birth is only permissible by the State Government and since there is no order of the State Government for change of date of birth of the petitioner, the entry was made in the service book on the declaration made by the petitioner. The certificate on which the petitioner is relying is issued on 25.4.2000 by the Primary School Bhagi, District-Chitrakoot. This certificate was never submitted before the competent authority at the time of making entry in the service book.

4. I have heard learned counsel for the parties.

5. Learned counsel for the petitioner Shri Awadh Tripathi submitted that as per the school leaving certificate (Annexure P/2) the date of birth of the petitioner is 1.7.1946 and, therefore, the correction regarding date of birth in the service book was right and after making correction by respondent No.3, now the respondents are not entitled to go back to his earlier order and to say that the correct date of birth of the petitioner is 19.5.1940.

6. On the other hand, learned counsel for respondent No.3 Shri Gautam Bhaduri argued that at the time of preparing of the service record of the petitioner, on the basis of the declaration made by him about date of birth the date of birth of the petitioner was recorded as 19.5.1940 and in token of the acceptance of the entry made in the service book the petitioner himself signed the service book on 18.8.1966. Had the petitioner submitted any school-leaving certificate then there was no occasion for respondent No.3 to record the date of birth of the petitioner contrary to the school-leaving certificate. Moreover, once the petitioner accepted his date of birth, as 19.5.1940 in view of Rule 84 of the Financial Code

Part-I that entry was final and even the respondent No.3 was not entitled/competent to change the same.

7. After hearing the learned counsel for the parties, I have perused the records. A perusal of the service book of the petitioner shows that at page 5 of the service book where the personal particulars of the petitioner were entered, the date of birth of the petitioner was entered as 19.5.1940 and in token of the acceptance of the above particulars the petitioner himself signed this and accepted the above entries on 18.8.1966. However, the Respondent No.3 changed the date of birth of the petitioner as 1.7.1946 and correction was incorporated and initialed by the Respondent No.3 on 3.11.1991 but no record is available on the file showing any representation made by the petitioner and the decision taken by the competent authority thereon nor anything has been mentioned at page No.5 indicating as to on what basis the Respondent No.3 corrected the date of birth of the petitioner.

8. Even in para 5.3 of the petition the petitioner has mentioned that when he came to know about the incorrect entry regarding his date of birth then he made a representation. But he has not specifically mentioned when he came to know and what was the source of his knowledge that his date of birth was incorrectly recorded in the service book. It has not been mentioned that when he made representation. Simply vague statement has been made in this para and nothing sort of the representation or any other document is available on record. In this connection if we look into the M.P. Financial Code Part-I Rule 84 which is relevant in the present case, it envisage that at the time of appointment the appointee should furnish the relevant documents regarding his date of birth for example matriculation certificate; birth certificate issued by the

(46)

municipal corporation etc. and he should declare his date of birth as per the Christian Era (English Calendar) and once the date of birth is entered in the service record shall be treated as final. Only clerical mistakes are permitted to be rectified and in any other circumstances no other correction will be made.

9. Therefore, once the petitioner accepted his date of birth at the time of preparation of the service book in the year 1966 as 19.5.1940 thereafter as per the above Rule 84 no change can be made and it is not a case of any clerical mistake and in this connection for the aforesaid view I am fortified by the judgment of the M.P. High Court reported in 2002(5) M.P.L.J. 231 State of M.P. Vs. Mathura Singh and others. Even the Hon'ble Supreme Court of India in the matter of Union of India Vs. C. Rama Swamy & others reported in (1997) 4 SCC 647 observed that bona fide clerical error would normally be one where an officer has indicated a particular date of birth in his application form or any other document at the time of his employment but, by mistake or oversight a different date has been recorded. However, in the present case there is no such mistake that such bona fide clerical error had occurred in the service record. Nor there is any finding of the Respondent No.3 before correcting the date of birth of the petitioner in the year 1991 that some clerical error was crept in. In the same matter Hon'ble the Supreme Court of India further held that subsequent change in the date of birth was therefore wrong because that was against the public policy. The Hon'ble Apex Court has observed that:-

> " In matters relating to appointment to service various factors are taken into consideration before making a selection or an appointment. One of the relevant circumstances is the age of the person who is sought

(47)

to be appointed. It may not be possible to conclusively prove that an advantage had been gained by representing a date of birth which is different than that which is later sought to be incorporated. But it will not be unreasonable to presume that when a candidate, at the first instance, communicates' a particular date of birth there is obviously his intention that his age calculated on the basis of that date of birth should be taken into consideration by the appointing authority for adjudging his suitability for a reasonable office. In fact where maturity is a relevant factor to assess suitability, an older person is ordinarily considered to be more nature and therefore, more suitable. In such a case, it cannot be said that advantage is not obtained by a person because of an earlier date of birth, if he subsequently claims to be younger in age, after taking that advantage. In such a situation, it would be against public policy to permit such a change to enable longer benefit to the person concerned. This being so, it is difficult to accept the broad proposition that the principle of estoppel would not apply in such a case where the age of a person who is sought to be appointed may be a relevant consideration to assess his suitability".

10. Therefore, in view of the above, the subsequent date of birth changed by the Respondent No.3 as "1.7.1946" in the year 1991 cannot be considered as the correct date of birth of the petitioner for the purpose of his service including retirement, as such I am of the opinion that the petition of the petitioner is without any substance and the same is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C.BHADOO
Judge

Thakur